

of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard.

Claim 6 (Amended) The animal bed encasing according to Claim 4, wherein said odor receiving layer includes an adhesive.

### REMARKS

#### 35 USC Section 112 Rejections:

Applicant has amended claim 5 to include the units for the rate of distribution of activated charcoal to the interior surface of the face textile. The amendment is supported by the specification on page 3 at line 30 and page 4 at lines 1-2.

Applicant has amended claim 6 to change its dependency from claim 1 to claim 4. This should provide proper antecedent basis for "the activated charcoal" in claim 8.

#### 35 USC Section 102 Rejections:

Claims 1-4 and 9-13 were rejected under 35 USC 102(e) as being anticipated by Denesuk et al. (6,196,156). Referring to claims 1-4, the Examiner submits that Denesuk et al. disclose (a) an animal bed encasing comprising an enclosure having a face textile 12 with an exterior surface and an interior surface and an odor receiving layer on the interior surface (Denesuk et al., col. 3, lines 7-10 and col. 28, lines 49-65, col. 29, lines 1-21) and (b) that the odor receiving layer comprises either an absorbing agent or an adsorbing agent which is activated charcoal (Denesuk et al., col. 28, lines 49-65).

Case law shows that a claim is anticipated only when the single reference discloses the identical invention, in as complete detail as is contained in the claim, and when every element of the claimed invention is literally present, arranged as claimed, in the reference. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that

Denesuk et al. specifically do not disclose "...an odor receiving layer disposed on the interior surface of the face textile" as recited by Applicants in claim 1. Further, Applicants submit that Denesuk et al. do not disclose the location of the odor controlling agents (col. 3, lines 8-14; col. 28, lines 35-67; and col. 29, lines 1-21) nor does it disclose how it relates to other layers and materials present in the bedding article. In light of the above discussion and since claims 2-4 depend from claim 1 (or from each other), Applicants respectfully submit that claims 1-4 are not anticipated by Denesuk et al.

In referring to claims 9-12, Applicants wish to rely upon the same case law cited above. Denesuk et al. disclose attaching a microbe-inhibiting lining to the inner side of a microbe-inhibiting cover (Denesuk et al., col. 9, lines 44-47). Denesuk et al. do not disclose a backing material disposed adjacent to an odor adsorbing layer wherein said backing material comprises a backing textile and wherein the backing textile comprises a point bonded nonwoven material or a film, as recited by Applicants in Claims 9-12. Applicants contend that a microbe-inhibiting lining is not the same element as the odor adsorbing layer of the present invention.

Further, the Examiner interprets that the foam disclosed by Denesuk et al. (col. 10, lines 34-59) is the same as the film disclosed by Applicants in claim 12. Denesuk et al. disclose that the foam is typically comprised of polyurethane and is used as a filling material and possibly as "an exterior material" in the bedding article (col. 10, lines 28-40). In contrast, Applicants disclose use of a film, such as a low density polyester film, as a backing material for the animal bed encasing in claim 12, which is not the same use as disclosed by Denesuk et al. Accordingly, since the reference patent does not contain each and every limitation or element of Applicants' invention, Applicants respectfully submit that claims 9-12 are not anticipated by Denesuk et al.

Referring to claim 13, the Examiner cites disclosure by Denesuk et al. (col. 10, lines 13-14) wherein the fabric cover of the bedding article may include polyester fiber. Denesuk et al. does not disclose that the backing material of the animal bed encasing comprises a low density polyester film as shown in claim 13. It is not interpreted by Applicants that polyester fiber is the

same as polyester film. A fiber, as defined by the *Dictionary of Fiber & Textile Technology* (Hoechst Celanese Corporation, 1990), is characterized as having a length at least 100 times its width, while a film, as defined by Webster's dictionary, is typically characterized more generally as a thin layer. Accordingly, since the reference patent does not contain each and every limitation or element of Applicants' invention, Applicants respectfully submit that claim 13 is not anticipated by Denesuk et al.

**35 USC Section 103 Rejections:**

Claims 5-8 and 14 were rejected as being unpatentable under 35 USC 103(a) over Denesuk et al. in view of Ryan et al. (5,019,062). Ryan et al. disclose a bi-component material which is designed to absorb liquids and/or gases into the material (col. 2, lines 66-68 and col. 3 lines 1-3 and lines 24-28). Applicants' invention is designed to repel liquids and/or gases which contact the surface of the animal bed encasing (page 3, lines 4-8). Thus, Applicants respectfully submit that the combination of references proposed by the Examiner would destroy the function of at least one of the references, specifically Ryan et al. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

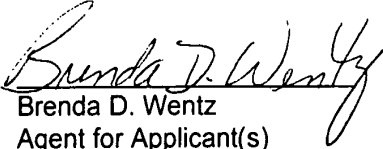
Furthermore, in response to the Examiner's position that one of ordinary skill in the art would be able to optimize the particle size of the activated charcoal, Applicants respectfully submit that Denesuk et al. and Ryan et al. do not recognize the problem of establishing an optimum particle size and an optimum distribution rate of the activated charcoal on the interior surface of the face textile. Applicants disclose that the 100 x 150 particle screened size activated charcoal is distributed at a rate of about 1.5 to about 3 ounces per square yard (page 3, lines 29-30 and page 4, lines 1-2). Without recognition of the problem by the references, no solution (i.e. optimum particle size and distribution rate for activated charcoal) can be achieved. *In re Peehs*, 612 F.2d 1287, 204 USPQ 835 (CCPA 1980). Thus, Applicants respectfully submit that the references, in combination, do not provide clear motivation to modify the references and create the animal bed encasing of the current invention.

Additionally, Applicants respectfully submit that Denesuk et al. in view of Ryan et al. lack motivation or suggestion to combine a film adhesive with the activated charcoal to secure it against the interior surface of the face textile. Denesuk et al. fails to disclose the use of any adhesive for adhering the odor controlling agents to the bedding article (col. 3, lines 8-14; col. 28, lines 35-67; and col. 29, lines 1-21). Ryan et al. disclose including activated charcoal in the second lamina of the bi-component absorptive material and using an adhesive bonding material preferentially applied to the first lamina (col 3, lines 48-50 and col. 4, lines 12-14). Ryan et al. further disclose the advantage of the arrangement to locate the activated charcoal far from the exterior surface of the bi-component material so that the dark coloring of the charcoal may be masked (col 3, lines 48-60). In contrast, Applicants disclose attaching the activated charcoal with adhesive on the interior surface of the face textile with no concern for masking the dark color of the activated charcoal (page 4, lines 3-5).

In view of the above amendments and remarks, it is respectfully requested that claims 1-14 be allowed and that the application be passed to issue.

Respectfully requested,

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Version with markings to show changes made:

Claim 5 (Amended) The animal bed encasing according to Claim 4, wherein said activated charcoal has [a] about a 100 x 150 particle screened size, and is distributed on the interior surface of the face textile at a rate of from about 1.5 ounces per square yard to about 3 ounces per square yard.

Claim 6 (Amended) The animal bed encasing according to Claim [1] 4, wherein said odor receiving layer includes an adhesive.